

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEB 17 1995

In The Matter of)

Reorganization and Revision)

Parts 1, 2, 21 and 94 of the)

Rules to Establish a New Part 101)

Governing Terrestrial Microwave)

Fixed Radio Service)

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS
OF
CENTRAL AND SOUTH WEST SERVICES, INC.

CENTRAL AND SOUTH WEST
SERVICES, INC.

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Dated: February 17, 1995

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CENTRAL AND SOUTH WEST SERVICES, INC.

Central and South West Services, Inc. ("CSWS"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's rules, submits the following Comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM").^{1/}

I.
Statement of Interest

1. CSWS, located in Tulsa, Oklahoma, is a service company of four electric utility companies: Public Service Company of Oklahoma, Southwestern Electric Power Company,

^{1/} In The Matter of Reorganization and Revision Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Service, WT Docket No. 94-148, Notice of Proposed Rule Making, adopted December 9, 1994, 60 Fed. Reg. 2722 (January 11, 1995), Order, DA95-140, Extending the Comment date to February 17, 1995 and Reply Comment date to March 17, 1995 (February 2, 1995).

West Texas Utilities and Central Power and Light Company. These companies will be directly affected by the outcome of this proceeding. CSWS is responsible for microwave engineering and licensing for these companies. As their representative in microwave licensing matters, CSWS appreciates the opportunity to bring their views to the attention of the agency.

II. **Introduction**

2. The Commission proposes to simplify the rules for common carrier point-to-point and private operational-fixed microwave services, currently contained respectively in Parts 21 and 94 of the Commission's rules, by consolidating these rules into a new Part 101. The proposed Part 101 rules make very few substantive rule changes. Rather, it is primarily a consolidation of Parts 21 and 94 rules, creating a comprehensive rule part of the combined services. Nevertheless, the NPRM welcomes recommendations for substantive amendments to its microwave rules.^{2/} Accordingly, CSWS submits the following comments for the Commission's consideration.

^{2/} NPRM at ¶ 7.

III.
Comments

3. CSWS supports the Commission's underlying goal to simplify and streamline the existing common carrier and private operational-fixed microwave rules. It agrees that due to the similarities of these rules and the industry's move to create common standards and coordination procedures, it is beneficial to consolidate these rules into one comprehensive part. Because these microwave services also share virtually the same frequency bands, with the exception of the 2 GHz band, as well as adhere to similar technical and operational rules, CSWS believes that further streamlining of these rules, as recommended herein, is necessary. Furthermore, CSWS believes that these services should be regulated alike, where possible, to create an even more streamlined set of regulations.

A. Private Operational-Fixed Microwave Licensees
Should Be Allowed to Lease Reserve Capacity to
Common Carrier Licensees

4. In the NPRM, proposed Section 101.135 incorporates existing Section 94.17 governing shared use of radio stations and the offering of private carrier service. The proposed rule merely repeats Section 94.17 in that it maintains the eligibility restrictions regarding shared use of private operational-fixed microwave facilities.

Therefore, under the existing and proposed rules, Part 94 private microwave licensees are permitted to lease reserve capacity to a common carrier for their internal use, but not for their customer traffic.

5. CSWS recommends that the agency eliminate any restrictions that would preclude private operational-fixed microwave licensees from leasing reserve capacity to common carrier entities for their customer traffic. Leasing of reserve capacity to all available entities, including common carriers for their customer traffic, is spectrally efficient. Often times, due to the size of the microwave bandwidth, many private operational-fixed microwave licensees have reserve bandwidth capacity which is underutilized from time to time. Moreover, improvements in transmission techniques and increases in transmission rates have created substantial efficiency in private operational-fixed microwave spectrum use, leaving microwave spectrum available for shared use. Unfortunately, Part 94 licensees are not always successful in finding other eligible users to share their reserve microwave capacity. Yet, there are numerous common carrier entities who do not need an independent microwave system to satisfy their requirements, and are willing to lease the reserve capacity from Part 94 licensees. These common carriers, unfortunately, are

prohibited from sharing or leasing capacity from Part 94 licensees.

6. Since one of the goals of this proceeding, as the NPRM indicates, is to "encourage more efficient use of microwave spectrum,"^{3/} then it is in the public interest to allow Part 94 microwave licensees to lease reserve capacity to common carriers for their customer traffic. Rather than continuing to allow these systems to be underutilized, the Commission should encourage efficient use of microwave spectrum by eliminating the eligibility and permissible use limitations on the proposed Section 101.135.

7. Allowing private operational-fixed microwave licensees to lease reserve capacity to common carriers does not render the service a common carrier one. In fact, it is a private service offering to a customer who happens to be a common carrier. The Part 94 licensee still has the discretion to discriminate in service offerings and contract rates.^{4/} Therefore, the underlying intent of the existing and proposed permissible use rules enunciated in 94.9 and 101.603(b)(i), respectively, is not undermined. The Part 94

^{3/} NPRM at ¶ 7.

^{4/} Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630, 641 (D.C. Cir. 1976).

service will remain private. For this reason, CSWS recommends deletion of subsection 1 of the proposed rule as well as deletion of any language referring to eligibility limitations.

B. The Commission Should Extend the 21-Day Minor Modification Rule to Private Operational-Fixed Licensees

8. Section 101.59 proposes to incorporate Section 21.41 of the point-to-point common carrier rules which states that an application to modify the microwave facilities will be deemed licensed on the 21st day following the date of the public notice. Unfortunately, the Commission does not propose to extend this rule to Part 94 licensees. CSWS believes that this rule section should be extended to Part 94 licensees. Since the Commission is proposing to apply many of the Part 21 licensing and application procedures to Part 94 applicants and licensees, it seems inequitable not to extend the same favorable licensing policies to private operational-fixed licensees. Moreover, the proposed Part 101 consolidates the rules which distinguish between major and minor modifications, and both services must adhere to the same licensing procedures regarding license modifications. Part 94 licensees should not be prejudiced, and should be allowed to have their minor

modification applications deemed authorized on the 21st day following the date of the public notice. Accordingly, CSWS seeks insertion of the term "private operational-fixed microwave" in the list of services enunciated in the proposed Section 101.59(b)(1).^{5/}

C. The Commission Should Extend the Blanket Special Temporary Authority to Private Operational-Fixed Microwave Licensees

9. Finally, CSWS seeks extension of the Blanket Special Temporary Authority ("BSTA") policy to Part 94 applicants. This policy is not codified under any Part 21 rules, but was established by the Commission's Microwave Branch in Gettysburg. The policy allows a Part 21 licensee, when issued a BSTA, to begin construction and operation of its microwave facilities as soon as the underlying application appears on public notice as accepted for filing, thus alleviating the need to file a separate STA request. This, as the NPRM indicates, saves both the applicant and the Commission valuable administrative time and resources. Unfortunately, this policy does not apply to Part 94 applicants. Unless the Commission can provide a sound rationale for not extending this policy to Part 94 licensees, CSWS sees no reason why this policy should not be

^{5/} NPRM, Appendix A, p. 60.

extended to private operational-fixed microwave licensees. With the licensing procedures virtually the same, and now proposed to be governed by the same rule part, it again seems inequitable to extend such favorable operating authority to one microwave service over another. Accordingly, CSWS seeks issuance of a separate public notice extending the BSTA authority to Part 94 licensees.

IV. Conclusion

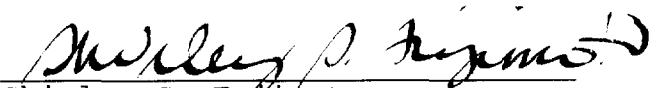
10. CSWS supports the Commission's efforts to streamline and simplify the existing Part 21 and Part 94 microwave rules. CSWS believes that this NPRM is a positive step in the direction to reduce unnecessary regulations. The recommendations espoused herein merely foster these goals, and specifically help to efficiently use the microwave spectrum. More importantly, they create an equitable operating environment for both common carrier and private carrier microwave licensees without jeopardizing the fundamental roles of the separate service. Accordingly, CSWS seeks adoption of the NPRM as proposed and with the recommendations suggested herein. Specifically, the Commission should: (1) amend proposed Section 101.35 to allow Part 94 microwave licensees to lease reserve capacity to common carriers; (2) apply proposed Section 101.59(b)(1)

to Part 94 licensees to permit their minor modification applications to be deemed authorized on the 21st day following public notice; and (3) extend the Blanket Special Temporary Authority policy to Part 94 licensees.

WHEREFORE, THE PREMISES CONSIDERED, Central and South West Services, Inc. respectfully requests that the Commission act upon its Further Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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